APPENDIX E

12-4-64

ATTY KIEFFER:

I am here to answer writ for subpoena duces tecum.

COURT:

I deny that. You don't have to answer it.

ATTY SPENCER:

I renew my motion and wish to reserve a formal bill of exception to the denial of Court for motion on attachment of a witness subpoenaed for whom I have requested the Clerk of this Court on the grounds this is denial of defendant's right.

COURT:

I have examined the return on the subpoena. Return on service 12-3-64 serve one Joseph Giarrusso by D. A. Spencer, name of attorney, making the service, this is the attorney before the bar today. I don't believe under the provisions of any City Ordinance he is permitted or granted authority to make service on any one.

ATTY KIEFFER:

Let the record reflect Supt. Giarrusso is in Court.

ATTY SPENCER:

Testimony of Dean Cecil Morgan who knows defendant, Stephen Wainwright, that defendant is a student at Tulane University and was at the time of the alleged offense, that he knows defendant's reputation for truth and his general character in that they are good, and he is considered to be a truthful person by those who know him.

COURT:

Let's take character witnesses.

ATTY KIEFFER:

No objection to that but to statement of Dean Morgan I reserve all rights on cross-examination.

PROFESSOR LOWELL TURRENTINE, DULY SWORN, TESTIFIED:

ATTY SPENCER TO PROFESSOR LOWELL TURRENTINE:

Q. State your name?

A. Lowell Turrentine.

Q. What is your occupation?

A. Visiting professor of law Tulane University.

Q. Mr. Turrentine are you an attorney?

A. A member of the bars of the State of New York, Ohio, State of California and U. S. Supreme Court.

Q. You stated you are a visiting professor at Tulane?

A. Yes.

Q. Do you know Stephen R. Wainwright?

A. Yes.

Q. How long have you known him?

A. Approximately 2 years and 3 months.

Q. What has been your relationship with Mr. Wainwright?

A. He has been an attentive and industrious student in my class, I have come to know him personally and socially, and he has been a welcome guest in my home.

Q. Do you know what defendant's reputation for truth and veracity is?

A. I believe I do.

ATTY KIEFFER:

I object. I am not satisfied he is qualified to know the reputation.

COURT:

Overruled. Proceed Mr. Spencer.

PROFESSOR TURRENTINE:

Excellent.

ATTY SPENCER TO PROFESSOR L. TURRENTINE:

Q. He has a very fine reputation among law students and members of the staff?

A. Yes, to my knowledge.

ATTY. KIEFFER TO PROFESSOR LOWELL TURRENTINE:

Q: Did you frequently go out with him at night, Professor?

A. I have never been out with him at night.

Q. Have you ever visited with him at his home?

A. I have not.

Q. Are you married?

A. Yes I am.

Q. Outside of class room and your knowledge of him as a student these are the only personal knowledge of what he does, or when he comes to visit at your house by your invitation?

A. Not entirely. I have had contact with others who know him, including his room-mates. Chiefly however through personal contact with him.

Q. After all this arose?

A. Not quite. Prior to this Mr. Wainwright applied for admission to Stanford University Summer School. In that connection I had considerable contact with him. I was at Stanford that summer and talked with the Associate

Dean who handles those matters and was familiar with Mr. Wainwright's record and discussed it with the people there.

Q. It is possible he could be belligerent at times isn't it?

ATTY SPENCER:

I object.

COURT:

Sustained. Next question.

ATTY KIEFFER TO PROFESSOR LOWELL TURRENTINE:

Q. Have you ever been out with the man when he has been drinking?

A. I have not.

Q. No other questions.

ATTY SPENCER TO PROFESSOR LOWELL TURRENTINE:

Q. Have you ever attended social functions sponsored either by the Tulane University School of Law or Law Students at the School, their annual dances or meetings?

A. I have attended student functions but not annual dances.

Q. At any of these functions you attended did the students consume liquor — they were social functions?

A. Yes.

Q. At any of these functions have you ever seen Mr. Wainwright conduct himself in a belligerent manner?

ATTY KIEFFER:

I object.

COURT:

Sustained.

MR. CUTHBERT S. BALDWIN, DULY SWORN, TESTIFIED:

ATTY SPENCER TO MR. CUTHBERT S. BALDWIN:

Q. State your name.

A. Cuthbert S. Baldwin.

Q. What is your occupation.

A. Attorney.

Q. Are you a member of a local law firm?

A. Baldwin, Haspel, Maloney, Rainold & Meyer.

ATTY KIEFFER:

I will stipulate to all qualifications of Mr. Baldwin and submit he is quite a reputable attorney in the City of New Orleans.

ATTY SPENCER TO MR. CUTHBERT S. BALDWIN:

Q. Have you ever been a delegate to the American Bar Association?

A. A member of the House of Delegates of the American Bar Association for roughly 10 years.

Q. Have you ever had occasion to meet the father of defendant, Stephen Wainwright?

A. Yes.

Q. What is your knowledge of the senior Mr. Wainwright?

A. Mr. Wainwright, Sr.?

ATTY KIEFFER:

It is again irrelevant and immaterial to the charges in this case.

COURT:

Overruled.

MR. CUTHBERT S. BALDWIN:

Mr. Wainwright, Sr. was in the House of Dele-

gates of the American Bar Association approximately 3 years when I was in and that is where I met him. I have brought here his biographical history, which is out of Martindale's Legal Directory.

ATTY SPENCER:

I ask for the Supt. of Police and also the PBI gentleman for whatever time you are setting the case for.

COURT:

We will return at 8:00 o'clock tonight to hear the rest of this case.

5-7-65

ATTY SPENCER:

I would like attachments issued to all people who we subpoenaed and who are not present in Court:

COURT:

Dr. Levy has been excused by Judge Lancaster. Dr. W. Kohlman Reed's service * * *.

ATTY SPENCER:

I wish to file a motion * * * the failure of this State to prosecute the matter * * * to continue this case would be putting defendant twice in jeopardy.

COURT:

Motion is denied. I am ready but * * *.

ATTY KIEFFER:

I would like to have proper motions.

ATTY SPENCER:

I have proper motions prepared. I am unable to furnish a brief.

COURT:

I will deny it without the brief.

ATTY J. B. KIEFFER:

I would like to have all witnesses present sequestered in so far as City witnesses * * * officer Boepple, Officer Otteson and Lt. Martello.

ATTY SPENCER:

We would like to have the witnesses instructed they are not to discuss this case amongst themselves.

COURT:

You are not to discuss this matter amongst yourselves.

COURT:

There was a note left with some individual I don't know whom, to the effect Dan Haggerty was to be served — something about a subpoena duces tecum Criminal District Court Case #188-368 — Section "E." The Court takes the position this isn't proper way to obtain same and this has been denied and Mr. Haggerty has been excused.

COURT:

Insofar as Dr. W. Kohlman Reed — denied because his Secretary signed for his service. Dr. Levy was excused by Judge Lancaster and we will permit defense to bring him in at a later date. We will stipulate he will testify to certain things.

ATTY KIEFFER:

I have no objection. The City is willing to stipulate, but find it would be objectionable because it is immaterial and irrelevant.

OFFICER BOEPPLE, DULY SWORN, TESTIFIED:

ATTY KIEFFER TO OFFICER BOEPPLE:

Q. State your name officer.

A. Elmo H. Boepple.

Q. You are a member of the N. O. Police Dept. so employed 10-13-64 at approximately 12:45 A. M.?

A. I am, and I was employed at that time.

Q. Are you familiar with an incident which occurred on Toulouse and Bourbon, which is in the City of New Orleans?

A. I am familiar with the case.

Q. Do you recognize defendant standing before the Court?

A. I do. The gentleman to my left.

Q. Please tell the Court under what circumstances you first discovered Stephen R. Wainwright, on the date, time and place heretofore stated?

A. On the 12th of October about 11:00 o'clock I was assigned to Car #12 — regular patrol duty. It is a blue and white marked vehicle of the N. O. Police Dept. I was attired in regular police uniform of the day. Car #12 cruises in the French Quarter. On or about the 10th of October Car #12, the officers working in that car were given specific instructions by our Platoon Commander and along with the instructions they were given a composite picture and also a photograph of a wanted subject who allegedly had committed a murder. At about 12:30 on the morning of the 13th of October me and my partner, John Otteson, were cruising on Bourbon St. We were going slow. Traffic was very light. When we passed the intersection of Toulouse and Bourbon at about 100 or 125 feet beyond the intersection of Toulouse St., I observed subject standing facing toward Canal Street. This person standing there resembled the person, or the composite.

ATTY SPENCER:

I object.

COURT:

Sustained.

ATTY KIEFFER:

For classification of the Court I would like to add to my original question, "and on what conditions did you recognize the defendant, who is present before this Court?"

COURT TO OFFICER BOEPPLE:

Answer the question.

OFFICER BOEPPLE:

The subject I observed standing in the 600 block of Bourbon St. fitted the description.

ATTY SPENCER:

I object. There is no charge here of his being a wanted criminal.

COURT:

What is the purpose of your question, Mr. Kieffer?

ATTY KIEFFER:

To lay the ground work for the reasons why the officer stopped to interrogate this defendant.

COURT TO ATTY SPENCER:

What is your objection?

ATTY SPENCER:

It is irrelevant and immaterial.

COURT:

The answer is irrelevant but the question is relevant. Overruled.

COURT TO OFFICER BOEPPLE:

Answer the question.

OFFICER BOEPPLE:

This subject whom I observed standing in the 600 block of Toulouse fit the general descrip-

tion of a person drawn on the composite and also on the photograph, which was given to myself and Officer Otteson on or about Oct. 10th. This subject had committed a felony.

ATTY SPENCER:

I object. Defendant isn't charged with a felony and I move that the testimony be stricken from the record.

COURT:

Sustained.

ATTY KIEFFER TO OFFICER BOEPPLE:

Q. The suspect, which you are referring to that was wanted for the felony is one that you had prior reference to as being the one that was given to you in your patrol car by order of the Lieutenant, is that correct?

A. Correct.

ATTY SPENCER:

I object on the grounds the evidence as to whether or not he resembled the person, is completely irrelevant and immaterial.

COURT:

Overruled. We all know in an arrest of an individual the Criminal Code of Procedure Article 60 must be complied with.

ATTY SPENCER:

I object to any testimony of the witness with regard to resemblance of this individual, because it is irrelevant.

COURT:

I feel it is relevant and material because of Article 60 of the Code of Criminal Procedure. Answer the question.

ATTY KIEFFER TO OFFICER BOEPPLE:

Q. Proceed.

A. Yes it was.

Q. Please elaborate on that particular point it is relevant to Tuesday, Oct. 13, 1964?

A. On seeing this subject in the 600 block of Toulouse I stopped the vehicle. I backed up about 30 feet, stopped it, and I noticed subject at that time beginning to walk toward Canal Street. My partner got out of the vehicle. I approached subject and began questioning him. I asked the subject what was his name?

ATTY SPENCER:

That is hearsay. I object.

COURT:

Overruled. Proceed.

OFFICER BOEPPLE:

I asked subject his name.

ATTY SPENCER:

Objection. It is hearsay.

COURT:

Overruled. Proceed.

OFFICER BOEPPLE:

Subject stated his name was Stephen Wainwright. I asked the subject where he resided. He gave me an answer of here in the French Quarter. I asked him where at in the French Quarter.

ATTY SPENCER:

I object on the grounds it is hearsay evidence.

COURT:

Overruled. Proceed.

OFFICER BOEPPLE:

I then asked the subject * * *.

ATTY SPENCER:

I object.

COURT:

Overruled. Proceed.

OFFICER BOEPPLE:

Where at in the French Quarter. He gave me a specific address on Ursuline St. I then asked the defendant if he had any documents on his person for verification that he was Stephen R. Wainwright. Subject at this time became belligerent; he attempted to walk away from us and we detained him. About using any physical force by stepping in front of him, we advised him we were not completed with our questioning. Defendant stated, "Look I know the law." "I am a law student; the law says I must only give you my name and my address; that is all I am required to give you."

He again tried to walk off. We detained him without any physical force. I then changed my kind of questioning to ascertain as to what he was doing in this particular section of the City at this particular hour of the night. He said, "I don't have to tell you, but if you need to know, I was going to a restaurant to get something to eat." At the time I first observed him he was standing still. He was quite nervous, which led me to believe that defendant before the bar and the subject on the composite was one and two of the same person. I at this time went back to the police car, while my partner remained on the sidewalk with defendant. I obtained a photograph and composite drawing which homicide division had made previously and I compared the likeness of defendant and subject on the photograph and composite and the likeness was there, so I decided to continue my questioning of subject and I tried to reason every way possible with this defendant. I informed him, "The reason we question you is because you fit the description of an individual who committed a murder a week or so

previous." I spoke to him. I asked him to co-operate with the police, if he could verify he wasn't the subject we were looking for he could proceed.

I also asked this subject for his draft card, knowing he is well within range, he was to carry the card with him at all times. He said he didn't have it, it was at home.

He mentioned that he was a Tulane Law Student. I didn't ask him that.

I explained to him the subject we were looking for, for whom I had the composite in my hands, had a tattoo on his left forearm. It was a tattoo "Born to raise hell."

Defendant was wearing a white denim type jacket with light cuffs. You could notice underneath he had a T-shirt, and he had a pair of dress slacks.

[redacted] subject's attitude led me to believe he was not a law student. His actions certainly reflect he wasn't a law student. He was not dressed as a law student.

I asked him to remove his jacket so I could examine his left arm, to see if he did or did not have this tattoo.

Defendant became very belligerent, threw up his arms saying, "I refuse to allow myself to be molested by a bunch of cops here on the street."

I told him, "you leave me no alternative, but to place you under arrest and convey you to the district station." He attempted to walk off. We stepped in front of him. No physical force was used to detain him.

We walked him to the car. He sat on the front seat. I explained to him he must be seated in the back seat, and he got in the rear

seat and my partner got in the back seat with him.

I started the vehicle and we proceeded to the station. At this time I got on the radio contacted Platoon Commander in Car #10 and advised him of the arrest, which we had made, and asked that he be present in the station, as we had subject who we thought might be connected with this murder.

We also got in touch with the homicide division team in Car #317 and requested that they meet us at the First District Station. They acknowledged they would do so. As we got to the location of St. Peter and N. Rampart defendant said, "you are actually taking me to jail?"

I said, "That is right, you are under arrest."

He said, "All right, you stupid cops."

I advised him that he would also be charged with reviling the police. I advised him for his own sake he should remain quiet for the rest of the journey to the station.

Nothing further was said until we go to the station. We took the defendant into the interrogation room. He insisted on using the 'phone immediately. We informed him of the procedure, that as soon as he was booked, he would then be allowed to use the telephone. We were awaiting the arrival of Lt. Martello and two homicide officers.

During this wait — it was no longer than 5 or 10 minutes — defendant paced nervously back and forth in the interrogation room. There were chairs available; he could have had a seat, but he kept pacing.

Lt. Martello and the officers in Car #317 arrived at the station.

My partner remained in the interrogation room, and I went out and advised Lt. Martello and the other officers why I arrested subject.

Lt. Martello informed me, he said, "All right Officer Boepple I will handled the investigation from here on out."

ATTY KIEFFER TO OFFICER BOEPPLE:

Q. Do you have a copy of the composite to which you refer to in your testimony?

A. I do.

Q. Could you let us see it please?

(Officer Boepple produces composite and hands same to Atty Kieffer.)

ATTY KIEFFER TO OFFICER BOEPPLE:

Q. I show you what we will mark "City Exhibit A" for identification purposes and I ask you if you recognize this?

ATTY SPENCER:

I object, because this is irrelevant and immaterial.

COURT:

Overruled. Proceed, Officer Boepple.

OFFICER BOEPPLE:

Yes, This is a composite, which our Platoon Commander gave the officer in Car #12 on or about October 10th.

ATTY KIEFFER TO OFFICER BOEPPLE:

Q. Would you read what this composite that has been marked "City Exhibit-A" reflects the man was wanted for?

A. All right. Under Item J-3546-64 wanted for murder. Under this item number is October, 1754 St. Charles Avenue, October 6, 1964, wanted subject. Unknown white male, approximately 23 years of age, 5'8" tall, 175 pounds, medium build, short brown hair. It says fur-

ther case of Capt. E. Stephens, Lt. J. Kruby, Detective Orin Mills, Jr., Homicide Division.

Q. Did you specifically ask Mr. Wainwright to take his jacket off?

A. I did.

Q. What was his statement to you?

A. He said, "I refuse to allow myself to be molested by a bunch of cops in the middle of the street."

Q. Did he respond in any other way to refuse to take his jacket off?

A. He attempted to walk off.

Q. Was his jacket ever removed on the street?

A. No, sir.

Q. What was your testimony regarding who was with you in the car?

A. Officer John Otteson.

Q. I have no other questions of this witness as this time.

ATTY SPENCER TO OFFICER BOEPPLE:

Q. Officer Boepple, have you discussed your testimony in this case with any one in preparation to coming here to testify today?

ATTY KIEFFER:

I object.

COURT:

Overruled. Answer the question.

OFFICER BOEPPLE:

Yes.

ATTY SPENCER TO OFFICER BOEPPLE:

Q. With whom?

A. With the parties involved and the attorney.

Q. Specifically what parties involved, what police officers, what attorneys did you discuss it with?

A. Lt. Martello, John Otteson and Mr. Kieffer.

Q. Did you discuss in detail everything you would testify to today?

A. No, just the main points of the case.

Q. You stated that the defendant Stephen R. Wainwright, was standing 125 feet from the corner of Toulouse and Bourbon. That is very specific how can you remember it?

A. It was approximately 125 feet, Mr. Spencer.

Q. How is it that you have such a very good memory of that, did you write down everything that happened that night?

A. Of this case in particular, I remember everything quite well.

Q. Did you discuss that aspect of the case with the other officers?

A. No.

Q. You testified also that you backed up 30 feet after you passed defendant?

A. That is right.

Q. Did you discuss that with the other officers?

A. No, sir.

Q. You stated he was standing still?

A. When I first saw him, yes.

Q. Was he looking at someone?

A. He was facing toward Canal Street. He might have been looking at something, I don't know.

Q. How long would you say he stood there without moving?

A. I can't say, because I saw him a matter of three, four or five seconds.

Q. You don't know whether he stopped to light a cigarette?

A. I drove by there once prior to that, and he wasn't there then.

Q. How long did you watch him?
A. Not very long — five seconds.

Q. When you first saw him did it immediately occur to you that he resembled the suspect that was wanted for murder?
A. Yes, just about the time it took me to drive 25 or 30 feet. This man looked familiar to me. I put two and two together.

Q. How many days before this incident was this composite drawing brought to your attention?
A. I think 3 days.

Q. How many other wanted persons were brought to your attention in those 3 days?
A. None where photographs or composites were given.

Q. This was the only photograph and composite?
A. Yes, in the past 3 or 4 days.

Q. When you first walked up to the defendant, I believe you testified, you asked him who he was?
A. Yes, I did do all questioning in the street.

Q. He told you his name was Stephen Wainwright?
A. He did.

Q. He told you that he lived on Ursuline Street?
A. He said here in the French Quarter — something evasive.

Q. What is evasive about that?
A. People say around the corner on a certain street. I wanted a specific answer. I questioned him.

Q. How many questions did you have to ask him?
A. Three times, First time in the French Quarter. Second, Ursuline, then he gave me a specific address.

Q. How far is Ursuline Street from the point where you stopped the defendant?

A. Not very far — a matter of, I would say, 4 blocks at the very most. About 4½ blocks.

Q. Did you believe defendant when he told you he lived on Ursuline St.?

A. Yes.

Q. Did you believe him when he told you he was Stephen Wainwright?

A. No. He refused to show identification.

Q. Why would he say he wouldn't give you any identification, did he give you a reason?

A. Yes. He said he didn't have any. He had left it at home.

Q. How could he cooperate more fully with you, if he didn't have any identification on him?

A. Merely by removing his jacket and letting me see his left forearm. If he would have done that he wouldn't be in Court today.

Q. Asking him to disrobe in the middle of the street?

A. I don't think it is asking him to disrobe.

Q. You don't think it is unreasonable to ask a man to remove his coat on Bourbon St.?

A. No, sir.

Q. This led you to suspect him?

A. This added to my suspicions.

Q. Did defendant at any time offer to get you his identification?

A. As we were getting out of the car at the First District Station.

Q. Did you know before that?

A. No.

Q. You didn't go to see if he did have identification?

A. No.

Q. Why not?

A. The man was already under arrest at that time.

Q. What did you arrest him for at first?

A. Vagrancy by loitering, reviling the police, resisting an officer.

Q. The first charge against him was what?

A. All three were put on at the same time.

Q. What did you arrest him for first?

A. Vagrancy by loitering — resisting an officer.

Q. At what point did you charge him with resisting an officer?

A. The charges were all brought at the station.

Q. You arrested him on Bourbon Street. What did you arrest him for there?

A. Resisting an officer and vagrancy by loitering.

Q. How did he resist you on Bourbon Street?

A. By attempting to walk off.

Q. Did you stop him?

A. We informed him he was under arrest. He attempted to walk away.

Q. What did you do then?

A. We stepped in front of him. We told him he would have to go with us.

Q. Did he resist then?

A. No.

Q. What did his resistance consist of — just turning and walking away?

A. Yes.

Q. Which way did he walk?

A. Toward Canal.

Q. Which way was your car parked?

A. Toward Esplanade.

Q. In which direction were you standing?

A. Facing the man. My partner was to my left, and he just turned around and started to walk off. My partner got in front of him and detained him.

Q. He did not at any time offer any forcible resistance?

A. That is correct, but he also did attempt to walk off after he was told he would have to go to the station with us.

Q. You also have him charged with vagrancy — Section 42-85 Paragraph 3. This says all persons wandering abroad, etc. What made you suspect he was doing any of these things?

ATTY KIEFFER:

I object. The man was booked in a different manner by a different person. The man is charged with vagrancy by loitering.

OFFICER BOEPPLE:

When I first observed him he was standing still for 5 seconds.

ATTY SPENCER TO OFFICER BOEPPLE:

Q. At the most?

A. Yes.

Q. Is this what his loitering consisted of?

A. That and the fact he couldn't show me any identification to verify whom he was.

COURT:

Case continued.

ATTY SPENCER:

I would like to find out what conduct is irritating. I flew down from Shreveport to try this matter. Defendant is engaged in exams at Tulane. I make a formal objection to the continuance of this case.

COURT:

You may do. Miss Heaton make a note defendant continued to shake his head. He turned his back to the Court. He walked about with his back to the Court on at least 3 different occasions.

5-11-65

Stenographer instructed to make following note in records of the Court.

"The Court on one previous occasion admonished the defendant because of his physical actions in Court of shaking his head in agreement or disagreement to statements of witnesses. The fact that he didn't stand before the bench and that he was walking about and turning his back to the Court would display arrogance and contempt. This happened on another occasion prior to continuance of the case.

The case was continued because of the fact that the Court was of the opinion, based upon the actions of defendant that he was acting in an arrogant and contemptuous manner. Continuance was based upon the fact that the Court didn't wish to sentence defendant for contempt, and the Court so stated to the defendant.

The Court discovered from Officer Heath on one occasion defendant said, "you lying son of a * * * *." To whom he was referring he can't say. Defendant appeared before the bench and asked to address the Court, and the Court permitted him to do so, at which time the defendant stated that none of his actions were meant as a disrespectful act to the Court. Defendant did state he was sorry. Defendant stated that the officer's lying is what caused him to be so upset.

Court // I received this in the mail. Mr. Spencer and I feel as though we should read it. Petition of Stephen R. Wainwright, defendant in case entitled City of New Orleans v. Stephen R. Wainwright, #B-80503 on the docket of Second Municipal Court of the City of New Orleans respectfully shows that defendant is charged in three affidavits with violating Ordinances relative to resisting arrest, #42-85 (3) relative to loitering and #49-7 relative to reviling the police. It is alleged in that affidavit that defendant violated said Ordinances on Tuesday, October 13, 1964. On December 4, 1964 trial of this case was begun and two witnesses heard. They testified as to the character of the defendant and to the fact he was and had been a student in the School of Law at Tulane University. Following the testimony of the two character witnesses the Court ordered trial of this matter continued indefinitely. That isn't true. This statement is false.

Over strenuous objection of Counsel for defendant sometime in April of 1965, subpoenas were issued to defendant and his attorney, Dan A. Spencer, at the time of continuance of trial.

Trial was set to resume May 7, 1965. At commencement of trial a number of witnesses for whom subpoenas had been requested were not present in open Court. That is true.

Court refused to issue attachments for these witnesses. He wanted me to attach Dr. Levy, who had been excused by Judge Lancaster, Dr. Reed and Supt. Joseph I. Giarrusso, who was available to the Court by telephone. Although he had seen fit to sequester the Dean at Tulane University of La. a prospective character witness for defendant — that isn't true. This is false. I offered the

Dean the use of my back office so he could have the use of my telephone and he need not sit in this Courtroom. I also feel that the Dean of a Law School is a man of quite a position and I wanted to offer him the best I had and I realize he is a very busy man.

The case was thereupon continued until May 14, 1965. Once more over strenuous objections of Counsel for defendant you said you had to fly in from Shreveport and your client had exams.

During the course of testimony the defendant was forced to stand at attention. He was standing as much at attention as you are now. This procedure has been used in Court for 15 years. I, myself, stood before this very same bar for eight years as a practicing attorney. Your Attorney, Mr. Spencer, was standing, and Mr. Kieffer was also standing. You are not standing at attention now, Mr. Wainwright. You will not turn your back to this Court and make remarks for others to hear, such as "you are a lying son of a" and stop there.

During the course of testimony defendant was forced to stand at attention before the dock — that means something like the Captain.

I didn't threaten you, Mr. Wainwright, but I will place you in jail, Mr. Wainwright, if I think your actions are contemptuous.

I reset this matter so I would not have to send you back to the House of Detention for a 24 hour period.

Judge said he was doing so in retaliation * * *. He further stated the fact that I didn't say this until the whole matter was finished. The reason I had reset this matter is the fact I didn't wish to send you to the House of Detention. This reason was in my mind and heart.

Counsel for defendant was from Shreveport. You said it would necessitate expenses for plane to come here, and you would be forced to * * *. It doesn't make any difference to me that you have to travel Mr. Spencer from Shreveport to here.

I would like to accommodate you, and I did attempt to. When you placed two witnesses on the stand — one who knew defendant's father — and the other one, I forgot his name — I did accommodate you at that time and when you called on the telephone requesting a different date other than the 13th you were accommodated.

Dr. Levy received his service so late that he couldn't get into Court.

As he, the Judge, understood that defendant's father "was a successful attorney and could afford counsel's fee."

(1) Due to the testimony of a character witness that knew his father but didn't know him, I deducted that this individual's father is a successful attorney. This isn't anything.

(2) And could afford your fee — I didn't use the word "fee" — could afford expenses from Shreveport here. Your fee I'm not interested in. I don't know whether you are going to be paid a dollar or a thousand dollars.

Further that defendant had exams didn't make any difference. It didn't make any difference.

When he turned his back to the Court I said, "Mr. Wainwright this is improper. The second time he nodded his head in approval and disapproval of what the officers were saying. I asked him to cease and desist, and he didn't do a thing. And when Officer Heath was in the Court that is when he made this remark, when he turned his back to the Court.

If these actions are not contemptuous, I am willing to be put in my place, as to what actions are contemptuous and what are not contemptuous.

It shows that he will suffer irrevocable injury as a result of these judgments and actions, etc. This case is prosecuted by the City of New Orleans for violation of Municipal Ordinances.

(1) That their continuance of this case from time to time over a period of five months constitutes a violation, etc. * * *. That is one sentence with quite a few statements. It was set to go to trial. This building consists of one courtroom for four Municipal Courts to use at set hours. My time had run way into Judge Bossetta's Court hours and I had to give up to Judge Bossetta. We reset your matter for 8:00 o'clock P. M. that same night. The matter would not have been completed until after midnight, as Judge Bossetta had a crowded docket, and 10:00 o'clock court had to use the Courtroom after Judge Bossetta's docket was completed, and the matter went down to be reset.

Going through my docket I discovered it and reset it. It was for the purpose of not sending Mr. Wainwright to jail.

That forcing of defendant to stand at attention * * * constitutes a violation, etc. * * *. I have already answered that.

Whether a trial judge may intimidate a defendant, etc. I have answered that. I am not threatening this gentleman by making a statement that I will place him in jail for contempt. If such is a threat, then it is a threat, and I will do it.

Whether defendant may be deprived of his right, etc.

I never said you cannot have a witness in this Court, which gets us back to Supt. Joseph Giarrusso. You walked into the office or chamber and asked if I would issue an attachment for a witness, who has been served and not present in Court and I said "Yes, Mr. Spencer" and you, Mr. Spencer said, "I want an attachment issued for one Joseph Giarrusso." I said if the Superintendent of Police had been properly served and wasn't here in Court, I will issue an attachment for his arrest. I asked my clerk to let me see the service. After checking I discovered all officers had been properly served with the exception of Spt. Giarrusso. Proper service had not been made.

Continuances. I would appreciate it if you would submit a brief on this particular point.

Imagination. It wasn't imagination. If the same thing occurs today, I will let you find out if it is contemptuous or not.

I have answered that.

The Court in failing to issue instanta subpoenas or attachments — I did state I would issue one until I looked at the service and there wasn't domiciliary or personal service.

Defendant doesn't have good health, etc. * * *. Please don't stand at attention.

This is a * * *. I consider myself a liberal man.

Jail defendant for contempt. I didn't threaten him.

This constitutes a shameless travesty, etc.

Beaten by the N. O. Police Dept.

When his attorney attempted to see him the attorney was ordered from the police station and arrested for re-

fusing to leave without seeing his client. I don't know this portion.

On the evening on which defendant was arraigned the attorney was informed by one Judge of Municipal Court. This I can't answer, for unless you wrote to me * * *. I will answer. Until you do so, I will let this portion alone.

That there would be a conviction whether defendant be an attorney, or priest or of impeccable character, etc. * * *. He said he and the other Judge * * * no one speaks for me. He and other Judges couldn't be re-elected without support of N. O. Police Dept. and must of necessity support the policeman. Ask the policemen how much support. I dismiss 75 or 80% of defendants who appear in my courtroom.

If you will recall, I told the Dean, as of now the facts surrounding this case would warrant a dismissal of defendant. I don't know the facts but as of now the facts I hear will not warrant a conviction of the defendant. I don't know where that leaves Office Boepple or Lt. Martello. You may file your Civil Action against them. That is your business.

I am here to do justice, such as is in my heart and mind, and I have done so for every day I have been sitting here.

I don't know whether Judge Bossetta is going to run for this job, etc. I don't know who said it to you.

Asked to * * * Chambers of presiding * * *. Unless he dropped the action he would be convicted. When he refused to drop the action against the policemen * * *. He was convicted on the record. Attempts were made on him not to take an appeal.

Prior to that, etc. #188-368.

These things I don't know. They aren't part of my business. Counsel has been informed by the City Atty's office * * * that doesn't bother me. It is not part of my business.

You are attempting to tie in what may have been said by others into what Judge Bossetta has been doing. I don't care what Mr. Kieffer does with his legal or personal life. I don't care what other judges do. I have stated this openly on the bench. No one on earth will speak or act for me.

(Copy) * * * at attempt to * * change probably will.

(Copy) Pleading guilty. That is a general statement. It covers this court. I will have to take these things one at a time.

A man may spend a million dollars to beat a case, that doesn't involve much. I know of one man who has spent that much defending himself. This is possible. It is in any court. You need not stand at attention before the dock of the Court. I wish I had looked this word "DOCK" up before I came to Court.

(Copy) * * * He will have to come again and again to Municipal Court. I don't know that. It is very possible he will.

(Copy) * * * not any slight movement. Mr. Wainwright don't you worry about that. In fact on occasions I have permitted old, decrepit ladies to sit down when the trial is going on. If your actions had been proper to start with, if you hadn't turned your back to this Court and doing things which I consider contemptuous I would have sent downstairs for a chair. You should have told me your duodenum was acting up.

(Copy) * * * to hear perhaps testimony of one witness. This does exist.

(Copy) I will issue any and all subpoenas you ask for promptly.

I will not grant that unless it is properly applied for.

If you want Mr. Dan Haggerty and you feel you are entitled to that, I may grant it to you.

(Copy) rights of court, mandamus, etc.

My mouth is dry again.

(Copy) Order.

I don't know that I can be ordered to do that * * * there are a number of reasons. I may want to continue it for Mr. Kieffer, for myself and for you.

It is possible a greasy egg has hit Judge Bossetta and the best thing for him to do is to continue the matter.

This is a discretionary matter. I am not saying you will complete the matter today.

* * * to cease and desist * * *. If you are suffering, I will send you a chair.

If you are sitting down I will expect you to act properly, which you weren't doing the other day, Mr. Wainwright. If you are feeling bad or weak I will send for a chair. That will be the reason and the only reason.

(Copy) I haven't threatened you Mr. Spencer but if your actions are improper I will tell you the same thing I told Mr. Wainwright. I haven't, as yet, said anything to you.

If telling you what I think is the power of this Court is threatening you, then call it that.

(Copy) to issue instanta subpoenas, etc. * * * This is your opposition which I would like to read, Mr. Kieffer.

COURT:

Miss Heaton make a note in the record that the attorney for the City and the attorney for defendant are in agreement that the doctors may be called at this time, so that their testimony may be taken so that they can return to their respective duties and work.

ATTY SPENCER:

Defendant does suffer from a weak back and stomach ulcers. Could we have a chair sent up for him?

COURT:

Yes. Get him a chair.
Note: (Defendant was given a chair in order that he could be seated in front of the bar for the entire trial.)

ATTY KIEFFER:

I would like defense counsel to waive any rights to an appeal at this time, because if he is dismissed only then will jurisdiction for this case be returned to you. He still has a right to a dismissal.

COURT:

I wouldn't worry about that. I don't want him to waive any right that he has for his client.

ATTY KIEFFER:

I am ready to proceed.

ATTY SPENCER:

I will stipulate that this Court has jurisdiction and is empowered to proceed at this time.

ATTY KIEFFER:

Not to waive defendant's rights.

COURT:

It is possible Mr. Kieffer what you may have left.

DR. WM. KOHLMAN REED, DULY SWORN, TESTIFIED:

ATTY KIEFFER:

In the event the doctor isn't being called as an expert I would request that the witnesses be sequestered.

COURT:

I don't think we need a sequestration.

ATTY SPENCER TO DR. W. K. REED:

Q. State your name.

A. Wm. Kohlman Reed.

Q. What is your occupation?

A. Physician.

ATTY KIEFFER:

I will stipulate he is a qualified and licensed practicing physician in the City and State.

ATTY SPENCER TO DR. W. K. REED:

Q. Were you treating defendant, Stephen Wainwright?

A. Before I answer that I have to get Mr. Wainwright's specific authorization to give any information.

STEPHEN R. WAINWRIGHT:

I give him my permission.

DR. W. K. REED:

Is that all I need — Verbal?

COURT:

Yes.

DR. W. K. REED:

A. Yes, I did treat Mr. Wainwright on October 12, 1964.

ATTY SPENCER TO DR. W, K. REED:

Q. What were you treating him for doctor?

A. For a common skin rash. Tinea Versicolor, which is a mild fungii infection of the top layer of the skin.

Q. On what part of the body was this found?

A. Primarily around his shoulders; under his arms and over his chest — front and back.

Q. Was this skin rash visible?

A. Both visible and invisible. Some was visible and some of it wasn't, I am sure.

Q. When it does become visible it doesn't appear as ordinary skin?

A. No, as ulcered skin.

Q. Is this unpleasant to look at?

A. It depends upon the sense of the individual. I have had this same thing 3 or 4 times. I found it only mildly objectionable. It didn't stop me from taking off and exposing that part of my body at the beach or anything like that.

Q. Have you ever come across people who find it objectionable?

A. I have. It depends upon the individual.

Q. No further questions of this witness.

COURT TO DR. W. K. REED:

Q. If he had a T-shirt on would one see his ailment?

A. Yes, if you were looking for it.

Q. If you weren't looking for it?

A. It all depends. This is a fungus that grows on the top layer of skin.

ATTY KIEFFER TO DR. W. K. REED:

Q. To what extent would medication relieve objection of this appearance of fungus?

A. If he used medicine as directed it would probably be gone in about a week, that is only the first part because you still have speckling and subsequent visits to the office.

Q. Your testimony is, Doctor, that; speaking in your professional opinion, inasmuch as you saw him on Oct. 12, 1964, in your experience and professional opinion this speckling was, or would be apparent 24 hours later?

A. Yes.

Q. 36 hours later?

A. Yes.

Q. 48 hours?

A. Yes. Seven days later.

Q. The speckling — is it a dark color?

A. Whiter color than surrounding skin.

Q. White like paper against my skin here?

A. Yes.

Q. In that respect it would have to be under fairly good lighting conditions for one to even see it? At night you couldn't see it pitch black?

A. No.

Q. If we turn the lights off in this Courtroom right now would it be apparent?

A. With acute vision I suppose one could see it if you were looking for it, yes.

ATTORNEY SPENCER TO DR. W. K. REED:

Q. Would a blow to the infected part of the skin tend to inflame the rash?

A. No.

DR. RICHARD M. LEVY, DULY SWORN, TESTIFIED:

ATTY KIEFFER:

I would like the record to reflect the Judge's statement regarding sequestration of wit-

nesses after the city asked that they be sequestered before the testimony of Dr. Reed.

COURT:

The record already reflects this Mr. Keiffer.

ATTY SPENCER TO DR. RICHARD M. LEVY:

Q. State your full name.

A. Richard Martin Levy.

Q. What is your occupation?

A. Physician.

Q. What is your specialty?

A. Orthopedic surgery.

Q. Do you know defendant, Stephen Wainwright?

A. Yes.

Q. Did you have occasion to see him on Oct. 13, 1964?

A. Yes. I examined Stephen at Touro on that day.

Q. Do you know about what time?

A. According to the record I have, he arrived at Touro at a quarter to five in the morning. It was some time after that that I examined him — about an hour or an hour and a half later.

ATTY KIEFFER:

Q. What date, Doctor?

DR. RICHARD M. LEVY:

A. October 13th —

ATTY SPENCER TO DR. R. M. LEVY:

Q. Did defendant relate to you a history of an injury and if so what?

A. I don't believe I can tell you the whole story since I didn't write it down. He told me he was picked up by the police, treated very badly and he was beaten on the right hand, wrist, left shoulder, upper-back.

Q. Were there objective symptoms of these injuries?

A. Objective symptoms don't go together. Objectives are findings. Symptoms are complaints. Plaintiff did complain of injury in this area. There was evidence of tenderness to pressure about the shoulder and back and about hand and wrist.

Q. Any restriction of motion?

A. Yes restriction in all three areas.

Q. Was there muscle spasm present?

A. No evidence of that.

Q. Can you state with reasonable medical certainty whether defendant's limbs had been subjected to some kind of reasonable trauma?

A. A sprain of the shoulder or strain. These words are used inter-changeably. From the story he gave me I felt he sustained some trauma to these areas.

Q. No further questions.

ATTY KIEFFER TO DR. R. M. LEVY:

Q. This man consulted you as an orthopedist and not as a physician?

A. Correct.

Q. You are frequently confronted or consulted by patients in your capacity as physician, and when they walk into your office the matter then is to find out why they are there — right?

A. Correct.

Q. You never have any reason whatsoever to doubt the reason that they have expressed — right?

ATTY SPENCER:

I object.

COURT:

Overruled answer the question.

DR. R. M. LEVY:

That is correct. I take the history they give me at face value.

ATTY KIEFFER TO DR. R. M. LEVY:

Q. Insofar as Mr. Wainwright is concerned, you had no reason at all to go beyond what he had said and you simply noted it in your record?

A. Correct.

Q. You are here to reveal what he told you?

A. Correct.

Q. You have no reason to believe it any more than you have to dis-believe it — right?

ATTY SPENCER:

I object.

COURT:

Overruled.

DR. R. M. LEVY:

I believe it because he told me. I didn't question it.

ATTY KIEFFER TO DR. R. M. LEVY:

Q. You have no reason to believe or dis-believe it?

A. Correct.

Q. You proceeded further to examine this patient insofar as what you believed to be objective elements which would lead you to your diagnosis. Is that correct?

A. Right.

Q. Then you made your prognosis?

A. Correct.

Q. Then you prescribed whatever you thought?

A. Yes.

Q. What did you prescribe?

A. I put a sling on patient. I don't know whether or not I gave him a prescription for medication

or not. I don't keep records for that. I asked him to return to see me at my home later in the day.

Q. This sling was put on his arm?

A. Yes.

Q. For what purpose was it put on?

A. Because of his shoulder.

Q. What happened after that?

A. He continued under my care. I again saw him several days later. He complained of numbness in his hand. He had complained of this earlier and it was noted he had a degree of sensitiveness over a certain area and Dr. Williams and I felt this was due to bruising of a small sensory nerve. For this there was no treatment and this contussion would subside and there would be no residue.

Patient complained of trauma to this scrotum. Since I am not trained for this, I referred him to Dr. Tomsky, who is a urologist. I did see Mr. Wainwright following another injury which had nothing to do with this. He told me his left shoulder recovered, but he was still having difficulty with his right hand. When I examined it I found nothing objective in his right hand. October 30th was the last time I saw the patient.

Q. October 30, 1964?

A. Correct.

Q. Did you refer him to any other consultants?

A. No, sir, I didn't.

Q. Did he see anyone else in your office?

A. Dr. Williams and myself.

Q. Did you observe the fungus condition which you just sat here in Court and heard Dr. Reed testify about, on the day you examined him?

A. No, I didn't, but this wouldn't be unusual.

Q. No further questions?

OFFICER E. BOEPPLE, DULY SWORN, TESTIFIED:

ATTY SPENCER:

Officer Beopple I would like to refer to something we discussed last Friday. You stated you had discussed what occurred on the night of Oct. 13th relating to defendant with Officer Martello and the City Attorney, etc. is that correct?

OFFICER BOEPPLE:

I did say that. Yes, I said that.

ATTY KIEFFER:

I object.

COURT:

Permit this, and proceed to another question.

ATTY SPENCER TO OFFICER BOEPPLE:

Q. What other persons did you discuss the case with besides Lt. Martello and the City Atty?

ATTY KIEFFER:

I object.

COURT:

I will permit it. Answer the question.

OFFICER BOEPPLE:

With Mr. Otteson, the other officer.

ATTY SPENCER TO OFFICER BOEPPLE:

Q. What about Detective Kent?

A. No, sir.

Q. What about Detective Townsend?

A. No, sir.

Q. Patrolman O'Rourke?

A. No, sir.

Q. Patrolman Gilford?

A. Briefly.

Q. With all of these people?

A. Just the ones who I state.

Q. Immediately prior to the trial on May 7th is that correct?

A. Yes.

Q. Mr. Boepple were you called as a witness in this case on December 4th?

A. No, sir.

Q. You weren't present?

A. I was here, but not called as a witness.

Q. Were you separate from the courtroom?

A. I was.

Q. Were you at that time given instructions not to discuss the case with each other?

COURT:

Officer Boepple were you told not to discuss this case with other officers while you were separated?

OFFICER BOEPPLE:

Yes.

ATTY SPENCER TO OFFICER E. BOEPPLE:

Q. Have you discussed this case with any officers involved since May 7th?

A. No, sir.

Q. You didn't discuss it with the City Atty?

A. No, sir.

Q. You haven't advised Mr. Marbello or Otteson as to what your testimony was?

A. No, sir.

Q. I believe you stated that after you put defendant under arrest he started to walk away and

this is why you charged him with resisting arrest?

A. As he attempted to walk off from us, yes.

Q. You had already informed him he was under arrest?

A. Yes.

Q. Did you inform him as to what he was under arrest for?

A. Vagrancy by loitering.

Q. What was it he did that constituted loitering in your opinion?

A. We observed him standing in the 600 block of Bourbon Street; subject had no identification on his person. He couldn't show us any thing.

Q. What was it that constituted loitering?

A. Observed him standing in the 600 block of Bourbon St. I tried to get some identification. He would not show us any. He said he didn't have any to show. We questioned him about what he was doing there. After some reluctance he said he was going to a restaurant to get something to eat.

Q. Was there any thing else that led you to believe he was guilty of loitering?

ATTY KIEFFER:

I object.

COURT:

Sustained.

ATTY SPENCER TO OFFICER E. BOEPPLE:

Q. Was it your testimony May 7th, you saw defendant standing put not more than 5 to 10 seconds?

A. It was.

Q. What was it that defendant did for you to charge him with reviling the police?

A. On the route to the station he called me a stupid cop.

Q. He called you that?

A. He referred to me and my partner.

Q. Did he say any thing else?

A. No, sir.

Q. There was no one else present but you and Officer Ottesen?

A. Correct. We were in the police vehicle.

Q. I have no further questions of this witness at this time. It may be possible that I'll want to recall him later.

OFFICER JOHN OTTERSON, DULY SWORN, TESTIFIED:

ATTY SPENCER:

I want the record to show I object in view of the fact it has been testified to that he has discussed the case with another witness in this case since inception of this trial.

COURT:

I will permit him to testify.

ATTY KIEFFER TO OFFICER JOHN OTTESON:

Q. State your full name.

A. John Otteson.

Q. You are a member of the N. O. Police Dept?

A. I am.

Q. So employed on Tuesday, Oct. 13, 1964?

A. Yes.

Q. You are familiar with the incident, which occurred in the vicinity of Toulouse and Bourbon Streets in this City at approximately 12:45 A. M. on that date?

A. Yes, I am.

Q. It involved Mr. Wainwright, defendant herein?
A. Correct.

Q. Would you please tell the Court who you were with at the time you confronted Mr. Wainwright?
A. With my partner, Ptn. Elmo Boepple.

Q. Please relate to the Court where Mr. Wainwright was and where you were when you first saw him?
A. My partner and I were cruising down Bourbon St. We had just passed Toulouse. We observed defendant, Mr. Wainwright on the left hand side of the street near the corner. The Lake side of the street.

Q. After you observed defendant what followed then?
A. My partner and I had been given a photograph of a subject wanted in connection with a murder which had happened 3 days prior to the 13th.

ATTY KIEFFER:
Go ahead.

OFFICER OTTESON:
We stopped the car. He was standing on the sidewalk.

ATTY KIEFFER TO OFFICER JOHN OTTESON:
Q. You observed him first?
A. Both of us saw him just about the same time.
Q. You got out of the car first?
A. I got out of the car because my partner was driving.
Q. Where was the car at the time you say that you came upon him?
A. We didn't exactly pass him up. I got out of

the car and went over to him. I asked him what his name was, while my partner parked the car. He stated his name was Stephen Wainwright, he was a law student. My partner came up and we asked him if he had identification on him. Subject said he didn't have any. We searched him. He didn't have any identification whatsoever. During questioning several times he tried to walk off from us. I asked him "Couldn't you cooperate and answer these questions"? He said I would be humiliated by the police. He was very nervous. My partner went back to the car and got the picture of the subject that he fit the description of as far as looks, and from his actions we thought he needed further checking out.

Q. How was he attired?

A. Black denims, a jacket, you could see part of a T-shirt showing. He did have a T-shirt. I don't know whether it was showing at that time or not. He had a wind-breaker jacket and black pants. I believe Ivy League pants.

Q. Do you recognize this?
(Attorney Kieffer exhibits composite.)

ATTY SPENCER:

I object.

COURT:

Overruled. The reason is Article 60 of the Criminal Code of Procedure and Article 108 of Criminal Code Book 15. Proceed.

OFFICER OTTESON:

Yes, I recognize it.

ATTY KIEFFER:

Let the record reflect the witness is looking at what has heretofore been identified and marked "Exhibit A". Do you recognize this?

OFFICER OTTESON:

Yes, I do.

ATTY KIEFFER TO OFFICER J. OTTESON:

Q. What is that?

A. Photostatic copy of a subject wanted in connection with a murder.

Q. Was it your belief at the time that Mr. Wainwright resembled this wanted subject?

ATTY SPENCER:

I object: It is immaterial.

COURT:

Overruled. Answer.

OFFICER OTTESON:

Yes. We also had another photograph of subject named Johnnie Mack Taylor in our possession besides this photograph.

ATTY KIEFFER:

I would like to offer, and introduce in evidence the composite of wanted subject heretofore marked "City Exhibit A" for purposes of identification.

ATTY SPENCER:

I object. It is irrelevant and immaterial.

COURT:

Overruled. File offer and introduce the composite into the record, Make your objection.

ATTY SPENCER:

My objection is it is irrelevant and immaterial to charges against defendant to date. I have no other objections.

COURT:

That is what you said. Proceed.

ATTY KIEFFER TO OFFICER J. OTTESON:

Q. After you interrogated Mr. Wainwright, what did you do?

A. We proceeded to place him into the police car.

Q. Was he under arrest at that point?

A. Yes, he was loitering at that location, since he didn't have any identification on him and also he had very little funds. He said he was going to get a cup of coffee, I believe.

Q. After you put him into the car, where did you proceed with him?

A. To the First District Station. While proceeding subject stated "You stupid cops." I asked him "What did you say?" He said I'm stupid, or something like that.

Q. When you say "I am stupid" clarify that.

A. He meant in other words * * *

Q. Referring to you being stupid, when you say "I am stupid".

A. Subject stated he was the stupid one. At first he said, "You stupid Cops." Both of us said, "What did you say?" He said, "I'm stupid." In other words the defendant said that.

Q. While you were interrogating him, was he cooperative, and obedient, did he answer your questions responsively?

ATTY SPENCER:

I object. It's irrelevant and immaterial.

COURT:

Sustained.

ATTY KIEFFER TO OFFICER J. OTTESON:

Q. Describe the conduct of defendant, Mr. Wainwright, while you were asking him questions at the scene, where you first observed him.

ATTY SPENCER:

I object.

COURT:

Overruled. Answer.

OFFICER J. OTTESON:

While my partner and I were questioning him subject was very nervous and on several occasions he tried to walk away. He said he didn't want to be humiliated by the police. I asked him how could questioning be humiliating? He didn't have any answer for that.

Q. No further questions.

ATTY SPENCER:

I will defer my cross-examination until City is finished.

COURT:

You will have to cross-examine him now.

ATTY SPENCER:

I will proceed then..

ATTY SPENCER TO OFFICER J. OTTESON:

Q. Mr. Otteson when you first noticed defendant, what was he doing?

A. Standing near the corner. He wasn't doing anything in particular.

Q. Was he at the corner of the block or 20 or 30 feet away?

A. I couldn't say exactly. He was standing near the Ivanhoe at Toulouse and Bourbon.

Q. How long did you observe him to be standing there?.

A. While we passed, that is the only time we ever saw him.

Q. How long would you say that was?

A. 5 or 10 seconds.

Q. Did you stop your car?

A. My partner did.

Q. You got out first?

A. Correct.

Q. You went back and asked defendant what he was doing there?

A. Correct.

Q. What did he say he was doing there?

A. On his way to get some coffee I believe.

Q. What did you do then?

A. I asked him what his name was.

Q. Did he tell you?

A. He told us his name.

Q. Did you state you had searched him and he didn't have any identification on him?

A. Correct.

Q. At what point did you search him? Was it there on the street?

A. Yes.

Q. How did you go about searching him? Did you have him put his hands against the wall?

A. We gave him a quick frisk.

Q. You didn't find any identification at all?

A. We checked for weapons. We asked him for identification, and he said he didn't have any.

Q. Was he already under arrest when you searched him?

A. Yes.

Q. What did you arrest him for?

A. With loitering.

Q. Nothing else — just loitering?

A. While he was on the street he tried to walk away several times, that would be a form of resistance.

Q. Was this before or after you had arrested him for loitering. When he committed the acts you

say are forms of resisting arrest? Which did you do first? Did you arrest him before he did this, or did he walk away before being informed he was under arrest?

A. I believe we told him he was under arrest for the loitering charge and then he * * * I don't really know.

Q. You don't know whether he started to walk away before or after he was told he was under arrest, is that correct?

A. Correct.

Q. You stated he had on black pants, T-shirt and a wind-breaker. Please describe that wind-breaker?

A. Tan wind-breaker. This was seven months ago.

Q. Did it have a colored insigna on it?

A. Not to my knowledge.

Q. You don't know whether it did or not?

A. No, sir.

Q. Did defendant do anything other than attempt to walk away from you to constitute resisting?

A. No, sir, not on the street.

Q. At the time he started to walk away you didn't have your hand on him, did you?

A. I never put my hands on him. I put my hand against the wall by the Ivanhoe, so he wouldn't walk away.

Q. As soon as you did that he stopped, is that right?

A. He didn't try to strike me or anything.

Q. When you told him to get into the car he did that, didn't he?

A. Correct.

Q. No further questions at this time.

LT. FRANCIS L. MARTELLO, DULY SWORN, TESTIFIED:

ATTY KIEFFER TO LT. FRANCIS L. MARTELLO:

Q. You are a member of the New Orleans Police Dept. so employed on Oct. 13, 1964?

A. Yes.

Q. How long have you been an officer?

A. Going on 17 years.

Q. What is your rank?

A. Lieutenant.

Q. Where were you at the time of this incident?

A. Assigned to the First District Police Station.

Q. In what capacity?

A. Platoon Commander at the First District.

Q. In full uniform?

A. Yes.

Q. You are familiar with the incident which occurred at the First District Police Station involving one Stephen Wainwright?

A. Yes.

ATTY SPENCER:

I object.

COURT:

Let me see the affidavits.

ATTY KIEFFER:

I wish to amend.

ATTY SPENCER:

I object.

COURT:

Which one do you wish to amend, Mr. Kieffer.

ATTY KIEFFER:

Resisting arrest and reviling the police.

ATTY SPENCER:

I object. This is an entire new charge.

COURT:

I agree with Mr. Spencer.

(RECESS)

COURT TO LT. FRANCIS MARTELLO:

Q. Are these the affidavits you wish to perfect?

A. Yes.

ATTY SPENCER:

Mr. Kieffer, do you rest your case here today?

ATTY KIEFFER:

I did rest my case.

ATTY SPENCER:

I move for a dismissal on the grounds that the City has failed —

COURT:

I will take that under advisement. Mr. Kieffer, what do you wish to do with these 3 charges? Mr. Spencer, is the defendant ready for these 3 new charges? Let's arraign the defendant Wainwright, Mr. Cipriano.

SAM CIPRIANO, CLERK TO DEFENDANT STEPHEN R. WAINWRIGHT:

Q. How do you plead to charge of disturbing the peace by assault on Patn. Frank Gilford on Tues. the 13th day of Oct. 1964 about 1:25 o'clock A. M. at the First District Police Station?

A. Not guilty.

Q. How do you plead to charge of disturbing the peace by assault on Patn. Geo. O'Rourke on Tuesday the 13th day of Oct. 1964 about 1:25 o'clock A. M. at the First District Police Station?

A. Not guilty.

Q. How do you plead to the charge of resisting an officer on Tuesday the 13th of Oct. 1964 at about 1:25 o'clock A.M. on Basin and St. Louis?

A. Not guilty.

ATTY KIEFFER:

We move for a continuance in these matters in as much as the City isn't prepared to go to trial at this time.

COURT:

Let these fall to whichever Court they are allotted to.

ATTY SPENCER:

I assume I will be allowed to file objections to these new affidavits in this case.

COURT:

Sure. You may have some objections that are good. Is that the business of the day, Mr. Kieffer?

ATTY KIEFFER:

Yes.